

Division 3. Air Resources Board

Chapter 2. Enforcement of Vehicle Emission Standards and Surveillance Testing

Article 2. Enforcement of New and Used Vehicle Standards

§ 2109. New Vehicle Recall Provisions.

(a) When this section is invoked pursuant to other sections of this article or Health and Safety Code Section 43105, the executive officer shall require the manufacturer to submit a plan within 30 calendar days of receipt of the invocation order to bring all vehicles into compliance. The executive officer shall order execution of the plan with such changes and additions as he/she determines to be necessary. The plan may include measures to identify the cause of vehicle noncompliance and to correct noncomplying conditions, correction of vehicles under manufacture, correction of vehicles in the possession or control of the manufacturer and dealers, and correction of vehicles in the possession of consumers (by correction upon service whether or not by warranty, by correction following notification of recall by mail, or by correction following efforts actively to locate and correct all such vehicles). The plan may include the temporary cessation of sales to dealers by the manufacturer and efforts by the manufacturer to prevent the sale of vehicles in possession or control of dealers, until the vehicles are corrected. The executive officer may order any one or more of the foregoing actions, or any other action reasonably necessary to bring all vehicles into compliance.

(b) The plan shall specify the percentage of vehicles subject to recall which must actually be corrected.

If, after good faith efforts, the manufacturer cannot correct the percentage of vehicles specified in the plan by the applicable deadlines, the manufacturer may request the executive officer to modify the percentage of vehicles specified in the plan, setting out in full the good faith efforts of the manufacturer to comply with the original plan, and the reasons it has been unable to comply. The executive officer shall, on the basis of this request, modify the percentage of vehicles which must actually be corrected if he/she finds in writing that the manufacturer has made a good faith effort and has shown good cause for the modification. If the manufacturer so requests, the plan shall specify the maximum incentives (such as a tune-up or specified quantity of gasoline), if any, the manufacturer must offer to vehicle owners to induce them to present their vehicles for repair, as a condition of showing that the manufacturer has made a good faith effort to repair the percentage of vehicles specified in the plan. The plan shall also include a schedule for implementing actions to be taken, including identified increments of progress towards implementation and deadlines for completing each such increment.

(c) If a vehicle is recalled pursuant to this section, the manufacturer shall make all necessary corrections specified in the plan without charge to the registered owner of the vehicle or, at the manufacturer's election, shall reimburse the registered owner for all costs (except incidental and consequential damages) of making such necessary corrections.

The term "all costs" shall not include incidental or consequential damages, except that the manufacturer shall reimburse the registered owner for any damage to the vehicle's emissions control system proximately caused by a defect subject to a recall action under this subsection or an action by a manufacturer taken pursuant to a plan under this subsection.

(d) If the plan ordered by the executive officer pursuant to this subsection includes a recall, the manufacturer may, within 20 calendar days of its receipt of the plan ordered by the executive officer, notify the executive officer of its desire to contest the necessity for or scope of that order. Any such notification shall specify the basis of the manufacturer's objections. Upon receipt of such notification, the executive officer shall stay the recall until the state board affords the manufacturer the opportunity, at a public hearing to be scheduled no less than 30 calendar days and no more than 60 calendar days after receipt of such notification, to present evidence in support of its objections.

A stay of a recall shall not, unless otherwise ordered, stay any other portion of a plan required herein or any other order issued pursuant to this article.

The manufacturer may, within 20 calendar days of its receipt of the plan ordered by the executive officer, request a public hearing of the state board on the necessity for or scope of any other corrective action ordered by the executive officer. Such a hearing shall be held by the state board not less than 30 and no more than 60 calendar days after receipt of the manufacturer's request for such a hearing. The plan ordered by the executive officer shall remain in effect pending such hearing, unless otherwise ordered by the executive officer.

(e) Failure by a manufacturer to carry out all corrective actions or recall actions ordered by the executive officer pursuant to Section 2106 or to subsection (a) of this section according to the schedule included in the plan ordered by the executive officer shall constitute a violation of that order and of Health and Safety Code Section 43105. The executive officer shall extend any deadline in the plan if he/she finds in writing that a manufacturer has shown good cause for such extension.

Board Administration and Regulatory Coordination Unit

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If the manufacturer fails to correct the percentage of vehicles subject to recall specified in the recall plan issued by the executive officer (including any modifications made by him/her), by the deadline(s) included in that plan, each vehicle included in the number of vehicles by which the manufacturer falls short of such percentage shall constitute a separate violation of the order and of Health and Safety Code Section 43016.

The state board may hold a public hearing to consider whether approval of such vehicles shall be suspended or conditioned. The state board shall hold such a hearing if requested to do so by either the affected manufacturer or the executive officer.

After the hearing, the state board may suspend or condition approval if it finds that the corrective action ordered by the executive officer was reasonable and that the manufacturer failed to comply or to comply within the specified time period.

NOTE: Authority cited: Sections 39600, 39601 and 43105, Health and Safety Code. Reference: Sections 39002, 39003, 39500, 43000, 43016, 43100-43102, 43104 and 43106, Health and Safety Code.

REFERENCE